

suffered a left distal radius interarticular nondisplaced fracture. Claimant was placed in a short arm cast and released to light-duty work with no lifting with the left arm.

3. On August 25, 2000, the claimant was provided a removable wrist splint. She was referred for physical therapy. Claimant did not return to Dr. Bagby for the scheduled follow-up appointments in September and November 2000.

4. Claimant continued to wear the left wrist splint at work the remainder of the time she was employed by respondent. She testified that after the accident she used her right arm more than her left.

5. Claimant had continuing complaints of swelling and pain in her left wrist. On March 19, 2001, the assistant principal at the school referred claimant back to Occupational Medicine Associates for additional treatment for her left wrist.

6. The additional treatment, which included medication and a brace for the left wrist, concluded on April 13, 2001, when claimant was released. No treatment was requested or provided for claimant's right upper extremity.

7. On July 26, 2001, claimant returned to Dr. Bagby with complaints of right shoulder pain. The doctor noted claimant advised him that she had the right shoulder pain since her fall. The doctor recommended an MRI to rule out a possible rotator cuff tear of the shoulder.

8. Claimant testified she developed the right shoulder pain from using her right arm more while protecting her injured left wrist. Claimant testified that when she was receiving physical therapy after she fractured her left wrist she had complained of the shoulder pain. She further testified she had told a co-worker, Diane Wanset, about her problems with her right upper extremity.

9. Claimant's last day at work with respondent was August 14, 2001, when her employment was terminated for reasons unrelated to her accidental injury. Although she currently has part-time employment as a cashier as well as doing car detailing, she denies any increased shoulder pain from those activities.

CONCLUSIONS OF LAW

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In Jackson,¹ the Court held:

¹Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1.)

But the Jackson rule does not apply to new and separate accidental injuries. In Stockman,² the Court attempted to clarify the rule:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

The claimant's uncontroverted testimony was her right shoulder pain developed because she used that upper extremity more while performing her job duties after the injury to her left wrist. Claimant continued to work, wore a splint on the left wrist and limited using her left wrist by using her right upper extremity. Uncontroverted evidence that is not improbable or unreasonable cannot be disregarded unless it is shown to be untrustworthy, and is ordinarily regarded as conclusive.³

The Board concludes that based upon the record compiled to date, claimant has suffered injury to her right shoulder as a natural and probable consequence of overuse while protecting her originally injured left wrist.

It is undisputed respondent had notice of the slip and fall accidental injury on July 28, 2000. Because the right shoulder condition is a natural and probable consequence of the original work-related left wrist injury, no additional notice under K.S.A. 44-520 is required and claimant is entitled to compensation for her shoulder condition.⁴

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁵

AWARD

²Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 263, 505 P.2d 697 (1973).

³Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

⁴Frazier v. Mid-West Painting, Inc., 268 Kan. 353, 995 P.2d 855 (2000).

⁵K.S.A. 44-534a(a)(2).

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Julie A.N. Sample dated February 18, 2002, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2002.

BOARD MEMBER

c: Timothy Power, Attorney for Claimant
Frederick Greenbaum, Attorney for Respondent
Julie A.N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director